



State of Illinois
Commission on Equity and Inclusion
Business Enterprise Program



State of Illinois Business Enterprise Program for Minorities, Women, and Persons with Disabilities Utilization Plan

Version 23.1

STATE OF ILLINOIS
BUSINESS ENTERPRISE PROGRAM
UTILIZATION PLAN

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Utilization Plan Part I: Bidder Signed Commitment

The undersigned Bidder submits this Utilization Plan (U-Plan) as part of its bid or offer in accordance with the requirements of bid solicitation number _____ and the requirements of the Business Enterprise Program (BEP) and/or Veterans Business Program (VBP). The solicitation contains a goal that _____% of the value of the contract will be performed by BEP certified vendors as defined by the Commission on Equity and Inclusion (CEI). The solicitation contains a goal that _____% of the value of the contract will be performed by Veteran Business Program (VBP) certified vendors as defined by CEI.

The U-Plan consists of the following four parts, to be completed and returned as instructed in this Commitment. No alterations or substitutions of this U-Plan will be permitted. A U-Plan must be completed and submitted for any assigned BEP and/or VBP goal:

Part I: Bidder Signed Commitment

Part II: Subcontractor Participation Agreement(s)

Part III: Good Faith Effort (GFE) (Action Checklist, Contact Log and Supporting Documentation)

Part IV: U-Plan Terms and Conditions (Terms and Conditions apply to all available checkbox options below.)

The undersigned Bidder acknowledges that (1) Bidder has read, understands, and agrees to all BEP/VBP policies, rules and procedures as defined in the Terms and Conditions in Part IV of this U-Plan and (2) Bidder hereby affirms (select appropriate option(s) below):

- ☐ Bidder is a BEP/VBP certified firm within the NIGP Code(s) identified in the solicitation and will fully meet the goal through self-performance.
(If checked, submit this signed Part I Commitment only.)
- ☐ Bidder has identified BEP/VBP certified subcontractor(s) to fully meet the assigned BEP/VBP goal. Only BEP/VBP certified subcontractors within the NIGP Code(s) identified in the solicitation may be used to meet the BEP/VBP goal. Subcontractors that are dually BEP and VBP certified may only be counted towards either goal, not both.
(If checked, complete and submit the signed Part I Commitment and signed Part II Subcontracting Participation Agreement(s)(PA). A signed PA must be submitted for each subcontractor.)
- ☐ Bidder cannot fully meet the goal but has submitted a Good Faith Effort (GFE) and hereby requests a waiver or reduction of the goal to _____.
(If checked, submit the signed Part I Commitment, completed Part III Good Faith Effort, and if requesting a reduction, the signed Part II Subcontractor Participation Agreement(s).)
- ☐ Bidder or its subcontractor(s) is participating in the Mentor/Protégé Program as a mentor to the proteges named in this U-Plan, and requests to earn an additional ____% towards the BEP goal based on its participation.
(If checked, a signed mentor/protégé agreement must be provided with this U-Plan. This option is not available for the VBP goal.)

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The undersigned Bidder understands that all subcontractors identified in this U-Plan and Participation Agreement(s) must be certified with CEI BEP/VBP within the NIGP Code(s) identified in the solicitation at the time of the bid/offer submission.

All Bidders and subcontractors shall perform only Commercially Useful Functions (CUF) through direct participation as defined in Part IV of this U-Plan. The Bidder and subcontractors understand that compliance with all tenets of the U-Plan is mandated, and this U-Plan will become a part of the contract, if awarded. Failure to carry out the requirements of this U-Plan is considered a material breach of the resulting contract, which may result in the termination of the contract or such other remedy as the procuring institution deems appropriate.

Bidder Name and d/b/a: _____

Signature: _____

Print: _____

Title: _____

Email Address: _____

Telephone: _____

Date: _____

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Utilization Plan Part II: Subcontracting Participation Agreement

Instructions: The Bidder is required to submit a separate, signed and fully completed Participation Agreement from each BEP certified vendor or VBP certified vendor. Once signed and submitted with the bid/offer, this Participation Agreement, along with the other Parts of this U-Plan, will become a mandated part of the contract, if awarded. The Bidder shall not prohibit or otherwise limit the BEP/VBP certified vendor(s) from providing subcontractor quotes to other potential bidders/bidders.

Solicitation Name: _____ **Solicitation Number:** _____

Name of Prime vendor: _____

Address: _____

City: _____

State: _____

Zip: _____

Telephone: _____

Fax: _____

Email: _____

Bidder's Contact responsible for compliance with this Participation Agreement:

Name of BEP/VBP Certified Vendor: _____

Type of Certified Vendor: ☐ BEP ☐ VBP

Address: _____

City: _____

State: _____

Zip: _____

Telephone: _____

Fax: _____

Email: _____

BEP/VBP Vendor's Contact responsible for compliance with this Participation Agreement:

Type of Agreement: ☐ Services ☐ Supplies ☐ Both Services and Supplies

(a) Proposed percentage of contract to be performed by the BEP/VBP Certified Vendor _____%

NOTE: The Bidder must indicate the percentage of the estimated contract award that will be subcontracted to the certified BEP/VBP Vendor.

(b) Anticipated start date of the Certified BEP/VBP Vendor: _____

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(c) This participation agreement shall have a term date from _____ to _____, with a total period of _____ years and _____ months, including renewals, change orders or extensions to the underlying contract.

(d) Description of work to be performed or goods/equipment to be provided by the BEP/VBP certified vendor. This description must include identified National Institute for Public Procurement (NIGP) Code(s) in the solicitation documentation. All Participation Agreements shall be subject to Agency/PIHE approval. Any changes involving or affecting the identified BEP/VBP certified vendor, scope(s) of work and NIGP Code(s) will not be permitted without notification to the soliciting Agency/PIHE and BEP/VBP Compliance, in writing, and approval of the soliciting Agency/PIHE. *(If more space is needed to fully describe BEP/VBP certified firm's proposed scope of work and/or payment schedule, attach additional sheets)*

The BEP/VBP subcontractor must be certified in the NIGP Code(s) identified in the solicitation for goal credit.

Statement of Work: Enter specific NIGP Code(s) including a detailed description of work to be performed or goods/equipment to be provided by the BEP/VBP certified vendor.

(e) The Bidder and/or its subcontractor has entered into a formal mentor/protégé agreement with the undersigned BEP certified vendor. ☐ Yes ☐ No

Name of Mentor (Bidder): _____

Additional BEP credit claimed _____%

(The prime vendor may earn 0.5% participation credit towards the BEP goal (up to a maximum of 5%) for every 1% of the value of the contract performed by the protégé.) Additional credit is subject to BEP approval.

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THE UNDERSIGNED PARTIES FURTHER AGREE that once signed and submitted with the bid/offer, this Participation Agreement, along with the other Parts of this U-Plan, will become a material part of the contract, and the BEP/VBP certified vendor will perform the scope of work for the percentage as indicated above. The Undersigned Parties do also certify that they did not affix their signatures to this document until all areas under Description of Service/ Supply and Fee/Cost were completed.

<hr/> Bidder (Company Name and d/b/a): <hr/> <div style="text-align: center;">Signature:</div> <hr/> <div style="text-align: center;">Print Name:</div> <hr/> <div style="text-align: center;">Title:</div> <hr/> <div style="text-align: center;">Date:</div>	<hr/> Certified BEP/VBP (Company Name and d/b/a): <hr/> <div style="text-align: center;">Signature:</div> <hr/> <div style="text-align: center;">Print Name:</div> <hr/> <div style="text-align: center;">Title:</div> <hr/> <div style="text-align: center;">Date:</div>
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Utilization Plan Part III: Demonstration of Good Faith Efforts To Achieve Goal And Request For Waiver

If the BEP/VBP participation goal will not be achieved in whole or part, the Good Faith Efforts Procedures outlined in Parts III and IV of this document will be used to evaluate submitted U-Plans. A Bidder providing Good Faith Effort documentation and a request for waiver must complete and submit Part III of this U-Plan in its entirety in addition to its bid/offer. Failure to submit the Good Faith Effort Contact Log, checklist, and supporting email and phone log documentation in its entirety shall render Vendor's bid or offer non-responsive.

Action Checklist

Below is a checklist of actions that will be used to evaluate a Bidder's Demonstration of Good Faith Efforts to a request for waiver. **Check the boxes next to the actions which you have completed.** If any of the following actions are not completed, attach a detailed written explanation indicating why such action was not completed. If any other efforts were made to obtain BEP/VBP certified vendor participation, in addition to the items listed below, attach a detailed description of such efforts.

- ☐ Utilize the website: <https://ceibep.diversitysoftware.com/> to locate BEP/VBP certified vendors within the NIGP Codes identified in the solicitation. At a minimum, email the resulting listed vendors with the project specifications sufficient to build a quote. Then, solicit quotes from all vendors who express interest with follow-up emails and telephone calls. Documentation of these efforts must be submitted as evidence, including copies of all e-mails sent, documented phone calls, messages, and conversations.
- ☐ Solicit through all reasonable and available means (e.g., attendance at a vendor conference, advertising, written notices) the interest of BEP/VBP certified vendors that have the capability to perform the work of the contract. Bidder must solicit this interest with sufficient advance time of at least 10 business days to allow the BEP/VBP certified vendor(s) to respond to the negotiation. Bidder must determine with certainty if the BEP/VBP certified vendors are interested by taking appropriate steps to follow up initial solicitations and encourage them to submit a bid or proposal, providing them with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding promptly to the solicitation.
- ☐ Select portions of the work within the NIGP Code(s) identified in the solicitation to be performed by BEP/VBP certified vendors to increase the likelihood that the goal will be achieved. This includes, where appropriate, unbundling contract work items into economically feasible units to facilitate BEP/VBP certified vendor participation, even when Vendor might otherwise prefer to perform these work items with its own forces. Any BEP/VBP vendors utilized outside the NIGP Code(s) identified in the solicitation will not count towards the goal credit.
- ☐ Make a portion of the work available to BEP/VBP certified vendors by selecting portions of the work or needed material based on the availability of BEP/VBP vendors.

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- ☐ Negotiate in good faith with interested BEP/VBP certified vendors. Evidence of such negotiation must include the contacted names, mailing addresses, email addresses, and telephone numbers of BEP/VBP certified vendors that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and a statement with the evidence as to why additional agreements could not be reached for BEP/VBP certified vendors to perform the work. A Bidder using good business judgment may consider many factors in negotiating with BEP/VBP certified vendors and may take a firm's price and capabilities into consideration. The fact that there may be some additional costs involved in utilizing BEP/VBP certified vendors may not, in itself, be a sufficient reason for a Bidder's failure to meet the goal, as long as such costs are reasonable. Bidders are not required to accept higher quotes from BEP/VBP certified vendors if the price difference is excessive or unreasonable.
- ☐ Thoroughly investigate the capabilities of BEP/VBP certified vendors and do not reject them as unqualified without documented reasons. BEP/VBP certified vendors' memberships in specific groups, organizations, associations, or political/social affiliations are not legitimate causes for the rejection or non-solicitation of bids and proposals in Bidder's efforts to meet the goal.
- ☐ Where subcontractor capacity and/or access to capital prevents participation, make efforts to assist in obtaining available resources such as State of Illinois lending programs and the prime's lending, capital, and bonding networks.
- ☐ Make efforts to assist interested BEP/VBP certified vendors in obtaining necessary equipment, supplies, materials, and related assistance or services.
- ☐ You must follow best practices when conducting a Good Faith Effort (GFE). Best practices can be found on the BEP website at: [Best Practices for GFE](#)

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GOOD FAITH EFFORTS CONTACT LOG

You MUST use this Good Faith Efforts Contact Log, if you are requesting a Good Faith Effort full or partial goal waiver. The log must document **all** contacts and responses (i.e., telephone, email, fax, etc.) regarding the solicitation of BEP/VBP certified vendors for the scope(s) of work within each specific NIGP Code(s) required in the solicitation used to establish the goal for this contract. Copies of all emails sent and received from prospective BEP/VBP vendors must be submitted as supporting documentation. Do not use this log to list BEP/VBP certified vendors who are identified on the Participation Agreement(s). **The Agency/PIHE established the BEP/VBP goal using NIGP Code(s) representing the scope(s) of work detailed in the solicitation's details. All BEP/VBP certified vendors identified in the required NIGP Code(s) must be contacted by email and phone to satisfy the Good Faith Effort requirements (See Part IV). A list of certified vendors can be found by looking up the NIGP Code(s) on the BEP/VBP Vendor Database located at <https://ceibep.diversitysoftware.com>.** Do not limit your contacts to the number of spaces shown below, duplicate the log as necessary.

Agency/PIHE Required NIGP Code(s) with description(s):

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PERIOD COVERED

SOLICITATION NAME: _____
SOLICITATION
NUMBER: _____
NAME OF PRIME
VENDOR: _____

to

[illegible]

PRIME VENDOR PHONE LOG TEMPLATE

PERIOD COVERED

to

[illegible]

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UTILIZATION PLAN PART IV: TERMS OF UTILIZATION

DEFINITIONS:

“Agency” shall be defined as any State Agency, Board, or Commission under the jurisdiction of the Governor of the State of Illinois.

“Public Institution of Higher Education (PIHE)” shall be defined as any public institution of higher education, and/or community college district within the State of Illinois.

"Business owned by a person with a disability" or "(PBE)" means a business concern that is at least 51% owned by one or more persons with a disability and the management and daily business operations of which are controlled by one or more of the persons with disabilities who own it. A not-for-profit agency for persons with disabilities as defined in Section 45-35 of the Illinois Procurement Code is also considered a "business owned by a person with a disability."

"Certification" means a determination made by the Council or by one delegated authority from the Council to make certifications, or by a State agency with statutory authority to make such a certification, that a business entity is a business owned by a minority, woman, or person with a disability for whatever purpose. A business owned and controlled by women shall be certified as a "woman-owned business". A business owned and controlled by women who are also minorities shall be certified as both a "woman-owned business" and a "minority-owned business".

"Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

“Compliance” means that a contractor has correctly implemented the requirements of this Utilization Plan.

“Contract Specific Goals” means the goals established under the Agency/PIHE’s supplier diversity program that are based upon relevant factors, including, but not limited to, the availability of diverse businesses in the scopes of work of the contract.

“Contractor” means any person or business entity that has entered into a contract with the Agency/ PIHE, and includes all partners, affiliates, and joint ventures of such person or entity.

"Control" means the exclusive or ultimate and sole control of the business including, but not limited to, capital investment and all other financial matters, property, acquisitions, contract negotiations, legal matters, officer-director-employee selection and comprehensive hiring, operating responsibilities, cost-control matters, income and dividend matters, financial transactions and rights of other shareholders or joint partners. Control shall be real, substantial, and continuing, not pro forma. Control shall include the power to direct or cause the direction of the management and policies of the business and to make the day-to-day as well as major decisions in matters of policy, management, and operations. Control shall be exemplified by possessing the requisite knowledge and expertise to run the particular business and control shall not include simple majority or absentee ownership.

"Council" means the Business Enterprise Council for Minorities, Women and Persons with Disabilities.

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"Diverse Firms" shall mean businesses owned by minorities, women, and persons with disabilities. Also, including qualified service-disabled veteran-owned small businesses and qualified veteran-owned small businesses.

"Woman" shall mean a person who is a citizen or lawful permanent resident of the United States and who is of the female gender.

"Woman-owned business" or "WBE" means a business concern which is at least 51% owned by one or more women, or, in the case of a corporation, at least 51% of the stock in which is owned by one or more women; and the management and daily business operations of which are controlled by one or more of the women who own it.

"Good Faith Efforts" (GFE) means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal by its scope, intensity, and appropriateness to the objective, that can reasonably be expected to fulfill the program's requirements.

"Joint Venture" means an association of a diverse firm and one or more other firms to carry out a single, for-profit business enterprise, for which each joint venture partner contributes property, capital, efforts, skills and knowledge, and in which the diverse firm is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

"Manufacturer" refers to a company that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

"Mentor" refers to a prime vendor or subcontractor which is mentoring a protégé pursuant to the Business Enterprise Program's Mentor/Protégé Program.

"Minority-owned business" or "MBE" means a business concern which is at least 51% owned by one or more minority persons, or in the case of a corporation, at least 51% of the stock in which is owned by one or more minority persons; and the management and daily business operations of which are controlled by one or more of the minority individuals who own it.

"Minority person" shall mean a person who is a citizen or lawful permanent resident of the United States and who is any of the following:

- (a) American Indian or Alaska Native (a person having origins in any of the original peoples of North and South America, including Central America, and who maintains tribal affiliation or community attachment).
- (b) Asian (a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, but not limited to, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam).
- (c) Black or African American (a person having origins in any of the black racial groups of Africa). Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American".
- (d) Hispanic or Latino (a person of Cuban, Mexican, Puerto Rican, South or Central

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American, or other Spanish culture or origin, regardless of race).

- (e) Native Hawaiian or Other Pacific Islander (a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands).

“NIGP Codes” identify the scope(s) of work as defined by the National Institute of Governmental Procurements. This five-digit code establishes and defines the detailed scope(s) of work for the contract. The first three digits of the NIGP code represents the Class or broad category of the work to be performed, and the second two digits of the NIGP code identify a more specific focus of work within the Class category. BEP/VBP vendors acting as primes or subcontractors must be certified in the NIGP Code(s) identified in the solicitation’s goal setting process to count towards the goal.

“Owned” means having all the customary incidents of ownership, including the right of disposition, and the sharing in all risks and profits commensurate with the degree of ownership interest.

"Person with a disability" means a person who is a citizen or lawful resident of the United States and is a person qualifying as being disabled under 30 ILCS 575/2(A)(2.1).

“Procuring Institution” may be “any State Agency, Board, Commission under the jurisdiction of the Governor of the State of Illinois, Public Institution of Higher Education and/or community college district within the State of Illinois, or Authorities, participating in the BEP goal setting process.

“Protégé” means a BEP certified subcontractor participating in a mentor protégé agreement pursuant to the BEP Mentor/Protégé Program.

"Qualified service-disabled veteran" means a veteran who has been found to have 10% or more service-connected disability by the United States Department of Veterans Affairs or the United States Department of Defense.

"Qualified service-disabled veteran-owned small business" or "SDVOSB" means a small business (i) that is at least 51% owned by one or more qualified service-disabled veterans living in Illinois or, in the case of a corporation, at least 51% of the stock of which is owned by one or more qualified service-disabled veterans living in Illinois; (ii) that has its home office in Illinois; and (iii) for which items (i) and (ii) are factually verified annually by the Commission on Equity and Inclusion.

"Qualified veteran-owned small business" or "VOSB" means a small business (i) that is at least 51% owned by one or more qualified veterans living in Illinois or, in the case of a corporation, at least 51% of the stock of which is owned by one or more qualified veterans living in Illinois; (ii) that has its home office in Illinois; and (iii) for which items (i) and (ii) are factually verified annually by the Commission on Equity and Inclusion.

“Regular Dealer” means a business that owns, operates, or maintains a store, warehouse, or other establishment in which the supplies, equipment, or goods (excluding software licenses) of the general character required for the Procurement are bought, kept in stock, and regularly sold or leased in the usual course of business. To be a Regular Dealer, the business must be an established business that engages, as its principal business and under its own name, in the Procurement and sale or lease of the products in question. A business may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the business both owns and operates distribution equipment for the products. Any supplementing of such business’ distribution equipment shall be by a long- term

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lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, manufacturer representatives, or other businesses who arrange or expedite transactions are not Regular Dealers.

“Scope of Work” means a narrative description of the goods to be provided and/or services to be performed on the contract associated with each NIGP Code(s) identified for the solicitation.

“State contracts” means all contracts entered into by the State, any agency or department thereof, or any public institution of higher education, including community college districts, regardless of the source of the funds with which the contracts are paid, which are not subject to federal reimbursement. “State contracts” does not include contracts awarded by a retirement system, pension fund, or investment board subject to Section 1-109.1 of the Illinois Pension Code. This definition shall control over any existing definition under this Act or applicable administrative rule.

“Supplier” refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles, or equipment are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of a contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in bulk items such as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

“Utilization Plan” (U-Plan) means a form and additional appropriate documentation included in all bids or proposals that demonstrates a vendor’s proposed utilization of vendors certified by the Business Enterprise Program to meet the targeted goal. The Utilization Plan shall demonstrate that the Vendor has either: (1) met the entire contract goal or (2) requested a full or partial waiver and made Good Faith Efforts towards meeting the goal.

“VBP” means Veterans Business Program

“Woman” shall mean a person who is a citizen or lawful permanent resident of the United States and who is of the female gender.

“Woman-owned business” or “WBE” means a business concern which is at least 51% owned by one or more women, or, in the case of a corporation, at least 51% of the stock in which is owned by one or more women; and the management and daily business operations of which are controlled by one or more of the women who own it.

Business Enterprise Program Aspirational Goal

The Business Enterprise for Minorities, Women, and Persons with Disabilities Act, 30 ILCS 575, establishes an aspirational goal of awarding not less than 30% of the total dollar amount of State contracts to businesses certified as owned and controlled by minorities, women, and persons with disabilities. 30 ILCS 575/4(a).

Section 45-75 of the Illinois Procurement Code, 30 ILCS 500, establishes a goal to award not less than 3% of the total dollar amount of State contracts to SDVOSBs and VOSBs.

This solicitation includes BEP and/or VBP participation goals and, therefore, requires bidders and bidders

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to include a BEP U-Plan and a VBP U-Plan. A “Utilization Plan” includes the form on page 1 of this document, with the Participation Agreement and Schedule(s); any additional documentation required in the instructions that demonstrates a commitment to utilizing certified BEP/VBP subcontractors to meet the targeted, contract-specific goal, described below; and documentation demonstrating Good Faith Effort when requesting a goal waiver or reduction.

A properly completed BEP U-Plan and VBP U-Plan is due at the time of bid or offer submission. Failure to complete and include a BEP U-Plan shall render a bid or offer non-responsive. 30 ILCS 575/4(f). Non-responsive bids and offers will be rejected by the Agency/ PIHE.

In addition to the other award criteria established for this solicitation, the Agency/ PIHE will award this contract to a Vendor that meets the contract-specific goal or makes Good Faith Efforts to meet the goal. The goal is applicable to the contract, amendments, modifications, extensions, change orders, and allowances. The Bidder’s U-Plan must indicate whether the goal will be met by self-performance or by subcontracting. If the prime vendor is BEP certified in all the NIGP Code(s) required in the solicitation, the entire goal can be met by prime vendor self-performance, without subcontracting with another certified BEP vendor. If the prime vendor is VBP certified in all the NIGP Code(s) required in the solicitation, the entire VBP goal can be met by prime vendor self-performance. The prime BEP or VBP Vendor must submit a U-Plan indicating that the goal will be met by self-performance and that the vendor is certified in all the NIGP Code(s) required in the solicitation. If a prime vendor subcontracts any portion of a contract to non-BEP/VBP certified subcontractors, the amount paid for goods or services delivered by those subcontractors will not be counted toward the goal.

NIGP Code Revisions Before Bid Opening

The following procedure for revising the five-digit NIGP class item commodity and service codes (NIGP codes) is for competitive sealed bids and proposals published on or after July 17, 2023, that have a value exceeding \$100,000, are not procurements for construction or construction-related services, and include a BEP or VBP goal.

Prime vendors that aren't self-performing BEP/VBP firms must select certified BEP/VBP subcontractors registered in at least one of the solicitation’s NIGP codes for their U-Plan. If a non-self-performing prime vendor wishes to use BEP/VBP subcontractors not registered in any of the solicitation’s NIGP codes, it must submit a revision request to the agency/PIHE using the NIGP Code Revision Request Form at least 7 calendar days before the bid opening date and obtain approval. A non-self-performing prime vendor may request to use different NIGP codes to identify BEP/VBP firms that can perform a commercially useful function under the resulting contract, as defined in the U-Plan, through direct participation via the NIGP Code Revision Request Form.

Primes that are self-performing certified BEP/VBP firms must be registered in all of the solicitation’s NIGP codes if they intend to perform the entire scope of the contract themselves. If a BEP/VBP firm not certified in all of the solicitation’s NIGP codes wishes to self-perform, it must submit a revision request to the purchasing agency/PIHE using the NIGP Code Revision Request Form at least 7 calendar days before the bid opening date and obtain approval. Using the NIGP Code Revision Request Form, a self-performing certified BEP/VBP prime vendor not registered in all of the codes originally listed in the solicitation may submit a revision request if it can perform a commercially useful function under the resulting contract through direct participation.

Direct participation includes work directly related to completing the contract's scope of work. Indirect

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participation includes work related to other aspects of the vendor's business. If the requesting vendor provides adequate justification of the commercially useful function and direct participation on the NIGP Code Revision Request Form, the agency/PIHE may approve the NIGP code revisions. The NIGP Code Revision Request Form is located on the Illinois Commission on Equity and Inclusion's (CEI) website.

The agency/PIHE must document its approval or disapproval on the NIGP Code Revision Request Form and send the completed form to the requesting vendor and CEI via the CEI.BEP.Compliance@illinois.gov email address at least 2 calendar days before the bid opening date. An agency/PIHE cannot let that date pass without acting on a revision request.

If an agency/PIHE approves the NIGP Code Revision Request Form or chooses to revise a solicitation's NIGP codes after publication but before the bid opening date, the goal setting must be redone to include the NIGP code revisions and approved by the BEP Compliance unit or a CEI-approved designee. Once the goal setting is redone, the agency/PIHE must publish a notification on its procurement bulletin including a comprehensive list of NIGP codes and the revised goal percentage. If the bid opening date is less than 7 calendar days from the notification's publication date, agencies/PIHEs must extend the bid due date to provide bidders/offerors with a minimum of 7 calendar days to comply with the changes.

Only the solicitation's NIGP Codes may be used to meet a good faith effort on the U-Plan.

A certified BEP/VBP firm that doesn't obtain registration in the solicitation's NIGP codes by the bid opening date must be notified of the deficiency by the agency/PIHE. The firm must be given a period of 10 calendar days to cure the deficiency. The agency/PIHE will determine whether the cure is adequate.

Contract (Specific) Goal to be Achieved by Vendor

This solicitation includes a contract-specific BEP/VBP participation goal based on certified BEP/VBP vendor(s) available to perform anticipated services and/or provide supplies required by this solicitation. The availability of certified BEP/VBP vendors was determined using The Institute for Public Procurement (NIGP Code) codes identified in the Invitation for Bid (IFB), Request for Proposal (RFP), Request for Qualifications (RFQ), or other solicitation documents.

The NIGP Code(s) required in the solicitation documents must be entered in Part II: Participation Agreement and Part III: Good Faith Effort Log sections of this U-Plan. Bidders seeking a Good Faith Effort waiver or goal reduction must contact **all** BEP/VBP vendors identified for respective NIGP Codes listed in the solicitation documents. Telephone calls are required to **all** BEP/VBP vendors who do not respond to Bidders by email. BEP/VBP vendors will be given a minimum of 10 business days to respond to the Bidder's email or phone call. Bidders will need to follow-up with **all** BEP/VBP vendors interested in bidding on the contract. If Bidders are unable to engage a BEP/VBP vendor in a contract, they must provide appropriate documentation as to why.

The prime vendor must also detail in the Participation Agreement its plan to utilize each BEP/VBP subcontractor, including: (a) the proposed percentage of the contract to be performed by each BEP/VBP subcontractor; (b) the anticipated start date for each BEP/VBP subcontractor; (c) the anticipated dates and time periods of utilization of each BEP/VBP subcontractor; and (d) a detailed description of the work to be performed by each BEP/VBP subcontractor, including identified NIGP Codes identified in the solicitation.

This U-Plan must demonstrate that the prime vendor has either: (1) met the entire contract goal; or (2) requested a full waiver and made Good Faith Efforts towards meeting the entire goal; or

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(3) requested a goal reduction and made Good Faith Efforts towards meeting a portion of the goal. Submission of Good Faith Effort log and appropriate documentation by the Bidder shall be considered as a request for a full or partial goal waiver.

For a U-Plan to be considered, at the time of bid or offer, the submitting prime BEP/VBP Bidder, if self-performing, or non-BEP/VBP submitting prime vendor's proposed BEP/VBP subcontractor(s), must be certified with the State of Illinois within the NIGP Code(s) identified in the solicitation by the Business Enterprise Program. Sheltered Workshops must be registered with the State for procurements containing a State Use Program category.

1. Joint Venture

Where there is a **joint venture** between a certified and non-certified vendor, the U-Plan must include an executed Joint Venture Agreement specifying the terms and conditions of the relationship between the parties and their rights and responsibilities to the prospective contract. The Joint Venture Agreement must clearly evidence that the BEP/VBP certified vendor will be responsible for a defined portion of the work and its responsibilities, risks, profits, contributions of capital, and personnel are proportionate to its ownership/interest percentage, as well as identifying the appropriate and specific NIGP Code(s). It must include specific details related to the parties' contributions of capital, personnel, equipment, share of costs, insurance coverage, and other items; the scopes to be performed by BEP/VBP certified vendor(s) under its supervision; and the commitment of management, supervisory personnel, and operative personnel employed by the BEP/VBP certified vendor to be dedicated to the performance of the contract. Established Joint Venture Agreements will **only** be credited toward BEP/VBP goal achievements for specific work performed by the BEP Certified Joint Venture Vendor. Each party to the Joint Venture Agreement must execute the bid or offer prior to submission of the bid or offer to the Agency/ PIHE.

2. BEP Vendor Freedom to Work with Other Vendors

An agreement between a prime vendor and a BEP/VBP certified vendor in which a BEP/VBP certified vendor promises not to provide subcontracting or pricing quotations to other vendors is prohibited. The Agency/ PIHE may request additional information to demonstrate compliance. Vendor agrees to cooperate promptly with the Agency/PIHE in submitting to interviews, allowing entry to business places, providing documentation, and to soliciting the cooperation of a proposed BEP/VBP certified vendor during investigation. Failure to cooperate by a Bidder and/or BEP/VBP certified vendor may render the bidder or bidder non-responsive or not responsible. **A contract will not be awarded to a Bidder unless that Bidder's U-Plan is found responsive.**

3. BEP/VBP Vendor Locator References

Firms must be certified with the State of Illinois as BEP/VBP certified vendors at the time of bid or qualify for credit toward the goal through participation in the BEP Mentor/Protégé Program. Bidders may consult the CEI BEP Vendor Directory at <https://ceibep.diversitysoftware.com/>.

4. Vendor Assurance

Vendor shall not discriminate based on race, color, national origin, sexual orientation, or sex in the performance of this contract. Failure by the Bidder to carry out these requirements is a material breach of the contract, appropriate. This assurance must be included in each subcontract that the Bidder sign with a subcontractor or supplier. which may result in the termination of the contract or such other remedy, as the Agency/ PIHE deems appropriate. **This**

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assurance must be included in each subcontract that vendor signs with a subcontractor or supplier.

5. Calculating BEP/VBP Certified Vendor Participation

The U-Plan and Participation Agreement(s) identify work and/or goods/equipment anticipated to be provided by all BEP/VBP certified vendors and paid for upon satisfactory completion/delivery, based on NIGP Code(s) identified in the solicitation. Only the value of payments made for services performed and/or actual supplies/goods/equipment provided by BEP/VBP certified vendors is counted toward the contract goal. Applicable guidelines for counting payments attributable to contract goals are summarized below.

- 5.1** The value of performed work and/or goods/equipment provided by the BEP/VBP certified vendor for the resulting contract shall be counted towards the goal. The entire amount of that portion of the contract that is performed by the BEP/VBP certified vendor, including supplies purchased or equipment leased by the BEP/VBP certified vendor shall be counted, except supplies purchased and equipment rented from the prime vendor submitting this bid or offer.
- 5.2** A BEP/VBP certified bidder shall count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the BEP/VBP certified prime vendor certified prime vendor self-performs toward the goal. A BEP/VBP certified prime vendor shall also count the dollar value of work subcontracted to other BEP/VBP certified vendors. Work performed by non-BEP/VBP certified parties shall not be counted toward the goal, including work that a BEP/VBP certified vendor subcontracts to non-BEP/VBP certified vendors.
- 5.3** A Bidder shall count toward the goal 100% of its expenditures for materials and supplies required under the contract and obtained from a BEP/VBP certified vendor manufacturer, regular dealer, or supplier within the NIGP Code(s) identified in the solicitation. A Bidder shall also count toward the goal the following expenditures to BEP/VBP certified vendors that are not manufacturers, regular dealers, or suppliers:
 - 5.3.1** The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the contract, provided that the fee or commission is determined by the Agency/ PIHE to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - 5.3.2** The fees charged for delivery of materials and supplies required by the contract (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer or a supplier of the materials and supplies being procured, provided that the fee is determined by the Agency/PIHE to be reasonable and not excessive as compared with fees customarily allowed for similar services. The BEP/VBP certified vendor's trucking firm must be responsible for the management and supervision of the entire trucking operation for which it

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is responsible on the contract; and must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

5.3.3 The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the Agency/ PIHE to be reasonable and not excessive as compared with fees customarily allowed for similar services.

5.4 BEP/VBP certified vendors who are performing on a contract as second-tier subcontractors (i.e., subcontractors hired by first-tier subcontractors to perform on the contract) may be counted in meeting the established BEP/VBP goal for this contract where the Prime Bidder will provide monthly documentation indicating the utilization of these vendors by reporting the utilization through the Diversity Contract Monitoring System (DCMS) to the BEP at <https://ceibep.diversitysoftware.com/> for State Agencies and by contacting the contract administrator for PIHE's.

5.5 A Bidder shall count towards the goal only expenditures to BEP/VBP firms that perform a **commercially useful function constituting direct participation** in the work of the contract within the NIGP Code(s) identified in the solicitation.

5.5.1 A vendor is considered to perform a **commercially useful function** when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by performing, managing, and supervising the work involved. The BEP/VBP certified vendor must also be responsible, with respect to materials or supplies used on the contract, for negotiating price, determining quality and quantity, ordering the materials or supplies, and installing the materials (where applicable) and paying for the materials or supplies. To determine whether a firm is performing a commercially useful function, the Agency/ PIHE shall evaluate the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it performs, the credit claimed for its performance of the work, industry practices, and other relevant factors.

5.5.2 A BEP certified vendor does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed through to obtain BEP/VBP certified vendor participation. In determining whether a BEP/VBP certified vendor is such an extra participant, the Agency/PIHE shall examine industry practices and similar transactions, particularly those in which BEP/VBP certified vendors participate in a meaningful way.

5.6 A vendor shall not count towards the goal expenditures that are not direct, necessary and related to the work of the contract. Only the dollar amount of services and/or goods that are directly attributable to the performance of the contract shall be counted. Ineligible expenditures include, but are not limited to,

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general office overhead and other Vendor support activities, unless allowed by the Agency/ PIHE.

6. Good Faith Effort (GFE) Procedures

Bidders must submit in their bid a U-Plan and Participation Agreement(s) that meet or exceed the published goal. If a Bidder cannot meet the stated goal, it must fill out and attach Part III of this document, explaining the Good Faith Efforts it undertook to meet the goal, including contacting all certified BEP/VBP vendors that fall under the scope(s) of work/NIGP Codes identified in the solicitation documentation, that were used to set the goal. U-Plans and attached documentation are due at the time of bid or offer submission. The BEP Council's delegate will consider the quality, quantity, and intensity of the Bidder's efforts to meet the BEP goal. The procuring Agency/PIHE will consider the quality, quantity, and intensity of the Bidder's efforts to meet the VBP goal.

The U-Plan contains a checklist of actions that the Council or its delegate will consider as evidence of Bidder's Good Faith Efforts to meet the BEP goal. The Agency/ PIHE will consider the checklist of actions as evidence of Vendor's Good Faith Efforts to meet the VBP goal. Documentation that alters or replaces the U-Plan and/or Participation Agreement(s), other than supplemental documentation, will not be considered during the U-Plan review.

- 6.1** In evaluating a Bidder's Good Faith Efforts, the Council, its delegate, or an Agency/PIHE as applicable may consider whether the ability of other bidders or bidders to meet the contract goal suggests that Good Faith Efforts could have resulted in a Bidder meeting the goal.
- 6.2** If the Council, its delegate, or an Agency/PIHE determines that a Bidder has made Good Faith Efforts to meet the BEP and VBP goal, respectively, the Agency/PIHE may award the contract provided that the Bidder is otherwise eligible for award.
- 6.3** If the Council, its delegate, or an Agency/PIHE, as applicable, determines that Good Faith Efforts have not been met, the bid or offer may be determined to be non-responsive by one of the State's Chief Procurement Officers.

7. Contract Compliance

Compliance with this section is an essential part of the contract. The following administrative procedures and remedies govern a Bidder's compliance with the contractual obligations established by the U-Plan and Participation Agreement(s). After approval of the U-Plan and Participation Agreement(s) as well as the award of the contract, the U-Plan, including all applicable Parts, becomes part of the contract. If a prime vendor requested a waiver due to its inability to obtain BEP/VBP certified vendor participation equal to or exceeding the goal, and the U-Plan was deemed responsive and contract awarded based upon a determination of Good Faith Effort, the total dollar value of BEP/VBP certified vendor work in the approved U-Plan, calculated as a percentage of the total awarded contract value, shall become the final contract goal.

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- 7.1** The U-Plan and Participation Agreement(s) may not be amended after contract execution without Agency/ PIHE prior written approval.
- 7.2** A Bidder may not make modifications to its contractual BEP/VBP certified vendor commitments or substitute BEP/VBP certified vendors without the prior written Agency/PIHE approval. Unauthorized modifications or substitutions, including performing the work designated for a BEP/VBP certified vendor with a Bidder's own forces, shall be a violation of the U-Plan and therefore a breach of the contract, cause to terminate the contract, and cause to seek other contract remedies or sanctions. For Agency/ PIHE approval of modifications or substitutions, the facts supporting the modifications or substitutions must not have been known nor reasonably should have been known by the parties prior to entering into the contract and/or subcontract. Bidder must negotiate with BEP/VBP certified vendors to resolve problems. Where there has been a mistake or disagreement about the scope of work and/or goods/equipment required by the contract, the BEP/VBP certified vendor can be substituted, but only where agreement cannot be reached for a reasonable price or schedule for the correct scope of work, goods and/or equipment. Any subsequent change **must** be submitted to the soliciting Agency/PIHE and BEP Secretary, in writing, and approved by the soliciting Agency/PIHE.
- 7.3** Substitutions of a BEP/VBP certified vendor may be permitted under the following circumstances:
- 7.3.1** Unavailability after receipt of reasonable notice to proceed;
 - 7.3.2** Failure of performance;
 - 7.3.3** Financial incapacity;
 - 7.3.4** Refusal by the BEP/VBP certified vendor to honor the bid or proposal price or scope;
 - 7.3.5** Material mistake of fact or law about the elements of the scope of work of a contract where a reasonable price cannot be agreed upon;
 - 7.3.6** Failure of the BEP/VBP certified vendor to meet insurance, licensing, or bonding requirements;
 - 7.3.7** The BEP/VBP certified vendor's withdrawal of its bid or offer; and/or
 - 7.3.8** Failure of the BEP/VBP certified vendor to maintain certification.

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- 7.4** If it becomes necessary to substitute a BEP/VBP certified vendor, the prime vendor must notify the Agency/PIHE and BEP Secretary, in writing, of the request to substitute a BEP/VBP certified vendor or otherwise modify the U-Plan and Participation Agreement(s). The request must state specific reasons for the substitution or modification. The Agency/PIHE shall notify the Council or its delegate of the request to substitute a BEP/VBP certified vendor or change the U-Plan and Participation Agreement(s). The Agency/PIHE will approve or deny a request for substitution or other change in the U-Plan and/or Participation Agreement(s) within five business days of receipt of the request or may request a BEP review of the documentation.
- 7.5** Where the Bidder has established the basis for the substitution to the satisfaction of the Agency/PIHE, it must make Good Faith Efforts to meet the contract goal by substituting one or more BEP/VBP certified vendors to satisfy the vacant goal. The Bidder may also choose to assign that goal percentage to another BEP subcontractor, as long as that subcontractor is certified in the NIGP Code(s) for that specific scope of work. Documentation of a replacement BEP certified vendor, or of Good Faith Efforts to replace the BEP/VBP certified vendor, must meet the requirements of the initial U-Plan. If the goal cannot be reached and Good Faith Efforts have been made, the Bidder may substitute with a non-BEP/VBP certified vendor.
- 7.6** Prime vendors are encouraged to utilize BEP/VBP certified firms. If a Bidder plans to hire a subcontractor for any scope of work that was not previously disclosed in the U-Plan and this increases BEP/VBP participation, the Bidder must obtain the approval of the Agency/PIHE to modify the U-Plan and must make Good Faith Efforts to ensure that BEP/VBP certified vendors have a fair opportunity to submit a bid or offer on the new scope of work.
- 7.7** If the prime vendor wishes to substitute its BEP/VBP certified subcontractor, a BEP/VBP certified vendor U-Plan and Participation Agreement must be executed and submitted to the Agency/PIHE within five (5) business days of the Bidder's receipt of the Agency/PIHE approval for the substitution. The Agency/PIHE must supply the new BEP U-Plan and Participation Agreement(s) to the BEP Secretary or their designee.
- 7.8** Bidder shall maintain a record of all relevant data with respect to the utilization of BEP/VBP certified vendors including, but not limited to, payroll records, invoices, canceled checks and books of account for a period of at least three (3) years after the completion of the contract. If the contract administrator is an Agency, the Bidder shall submit monthly reports to BEP via the Diversity Contract Monitoring System (DCMS) reporting system. If the contract administrator is a PIHE, the Bidder shall contact the contract administrator to obtain reporting requirements. Full access to these records shall be granted by the Bidder within 48 hours of a written demand by the Agency/PIHE, BEP Secretary, or any duly authorized representative thereof, or to any municipal, county, State, or federal authorities. The Agency/PIHE shall have the right to obtain from Bidder any additional data reasonably related or necessary to verify any representations by Bidder. After the performance of the final item of work or delivery of material by the BEP certified vendor

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and final payment to the BEP certified vendor by Bidder, but not later than thirty (30) calendar days after such payment, Vendor shall submit a statement confirming the final payment and the total payments made to the BEP/VBP certified vendor under the contract at <https://ceibep.diversitysoftware.com/> for contracts administrated by Agencies. For contracts administered by PIHEs, Bidder shall submit a statement confirming the final payment and the total payments made to the BEP/VBP certified vendor under the contract in the manner prescribed by the PIHE contract administrator. Bidder's failure to report monthly shall constitute a material breach of this contract and subject Bidder to the remedies and penalties described in Section 7.10. For contracts administrated by Agencies, the prime vendor and BEP/VBP subcontractors will receive notification and instructions after the start of the contract for reporting to BEP's DCMS. Participants in the Mentor Protégé Program shall utilize BEP's DCMS system as a reporting mechanism and will receive reporting notifications and instructions after the start of the contract. Failure to report contractual spend or lack of spend monthly reporting may result in a contractual breach.

- 7.9** The Agency/PIHE will annually review the Bidder's compliance with these provisions and the terms of its contract. CEI/BEP will review contractual language regarding cancelation of contracts deemed not to be compliant with the BEP. Without limitation, Bidder's failure to comply with these provisions or its contractual commitments as contained in the U-Plan and Participation Agreement(s); failure to cooperate in providing information regarding its compliance with these provisions or its U-Plan; or provision of false or misleading information or statements concerning compliance, certification status or eligibility of a BEP certified vendor, Good Faith Efforts or any other material fact or representation shall constitute a material breach of this contract and entitle the Agency/PIHE to declare a default, terminate the contract, and/or exercise those remedies provided for in the contract, law and equity.
- 7.10** The Agency/PIHE reserve the right to withhold payment to the Bidder to enforce these provisions and Vendor's contractual commitments. Final payment shall not be made pursuant to the contract until the Bidder submits sufficient documentation demonstrating compliance with its U-Plan and Participation Agreement(s).

8. Mentor/Protégé Program

Bidder and/or its subcontractor(s) are encouraged to participate in BEP's Mentor/Protégé Program by mentoring a BEP certified vendor. Participation is subject to BEP approval. All participants must meet the eligibility requirement and must comply with all requirements set forth in the Mentor/Protégé Program Rules, which may be found <https://cei.illinois.gov/business-enterprise-program/cbmp-program.html>.

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